bank accounts, the same result should be reached. Otherwise, in the words of Dean Ames, "We should have this extraordinary condition of things: the donee unable to transfer the shares or collect the deposit, because the gift is not deemed complete; the donor equally helpless, because he cannot produce the certificate or bank-book; the company or bank, on the other hand, in a position capriciously to recognize either the donor or donee as *dominus* of the claim, or, indeed, unless they come to some compromise, to refuse with safety to recognize either." [8] It is generally said that such an unregistered transfer of stock passes only an equitable title; [9] and some cases have held that an attaching creditor of the transferor should prevail against the transferee.[10] But, with submission, both of these views are wrong; and, while the corporation is justified in refusing to recognize the donee as stockholder until he asks for registration, he has nevertheless acquired a legal right to the stock.[11]

APPOINTMENT OF EXPERT WITNESSES BY THE COURT. — With increasing specialization in industry and science and the consequently increasing importance of expert opinion evidence, there has grown up much dissatisfaction with the old method, whereby each side calls its own expert witnesses, who are apt, consciously or unconsciously, to become partisans of the side employing them. About the mildest possible reform that promises any substantial improvement in those conditions was embodied in a Michigan statute recently held unconstitutional. *People* v. *Dickerson*, 129 N. W. 198 (Mich.). That statute provided for appointment by the court of not more than three suitable disinterested persons to investigate issues involving expert knowledge or opinion in homicide cases, and testify at the trial. It did not preclude either prosecution or defense from using other expert witnesses.

Due process of law,[1] which the court thought infringed, does not require a cast-iron adherence to the old forms of procedure.[2] It does not require that the judge refrain from expressing to the jury an opinion as to the credibility of particular witnesses although that is the practice in most states.[3] Federal courts and some state courts still follow the old common-law practice of charging on the facts as well as the law.[4] Neither does due process preclude the prosecution from calling witnesses whose names are not indorsed on the indictment or contained in the list given to the defendant.[5] However, it would be well for the legislature to provide for

[8] See AMES, CASES ON TRUSTS, 2 ed., 156, n. (cited with approval, Talbot *v.* Talbot, *supra*, 547).

[9] See Talbot *v.* Talbot, *supra*, 546; Basket *v.* Hassell, 107 U. S. 602, 614; 4 THOMPSON, CORPORATIONS, 2 ed., § 4318.

[10] Application of Murphy, 51 Wis. 519. *Contra*, Reilly *v.* Absecon Land Co., 75 N. J. Eq. 71.

[11] See Parker *v.* Bethel Hotel Co., 96 Tenn. 252, 284; 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., §§ 193–200; 16 HARV. L. REV. 312.

[1] MICH. CONST., Art. II, Sec. 16; U. S. CONST., Amendment XIV.

[2] Hurtado *v.* California, 110 U. S. 516; Brown *v.* New Jersey, 175 U. S. 172.

[3] Dakota *v.* O'Hare, 1 N. D. 30; People *v.* O'Brien, 96 Cal. 171.

[4] Simmons *v.* U. S., 142 U. S. 148; McClain *v.* Commonwealth, 110 Pa. St. 263.

[5] People *v.* Machen, 101 Mich. 400; State *v.* Hollingsworth, 100 N. C. 535.

giving the accused the names of the official experts before the trial begins. The most that can be said against the statute is that possibly no opinion on some topics concerning which little is really known should be given the weight which the jury might attach to any opinion coming from men designated by the judge as suitable and disinterested experts. Such arguments should be addressed to the legislature. No doctrine of constitutional law is more frequently repeated than that the courts will not overthrow an act of the legislature simply because they deem it unwise.

Another ground on which the court bases its decision is that the statute in question transfers the power of choosing witnesses from the prosecuting attorney, an administrative officer, to a member of the judicial department, in violation of the provision of the state constitution for a separation of powers.[6] Comparing a theoretical analysis of the powers of government with the distribution of those powers by the state constitutions, it is apparent that legislative power (*e. g.* the veto) is entrusted to the governor. So the constitutions give the impeaching power, theoretically judicial, to the legislature. Furthermore, without express warrant in the usual state constitution, the judicial power of punishing contempt is exercised by the legislature,[7] while the courts exercise the legislative power of prescribing rules of practice and many theoretically administrative functions, such as appointing receivers to wind up the affairs of insolvent corporations, and administering estates of deceased persons. These are but a few of many illustrations which show that the distribution of powers is historical rather than analytical.[8] It is impossible definitely to assign every function of government to one of the three departments as a matter of logic, and it would be highly undesirable to do so as a matter of law.[9] There is a broad borderland of functions, which may be shifted from one department to another as circumstances require. Thus many powers formerly thought judicial[10] are now exercised by administrative officers or boards.[11] The power given by the Michigan statute to choose official experts resembles more closely the power to appoint referees than that to choose witnesses for one side. Hence, even if not analytically a judicial function, it is historically so.

RELIGIOUS BELIEF AS AFFECTING THE CREDIBILITY OF DYING DECLARATIONS. — One exception to the rule excluding hearsay evidence is the admission in a criminal prosecution for homicide of the dying declarations of the decedent as to the manner of his death. The essential requisite of such declarations is that they shall have been made when the declarant has lost all hope of life and is firmly convinced that he is

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[6] MICH. CONST., Art. IV.

[7] People *ex rel.* McDonald *v.* Keeler, 99 N. Y. 463; *In re* Gunn, 50 Kan. 155.

[8] See SALMOND, JURISPRUDENCE, 93–96.

[9] See GOODNOW, ADMINISTRATIVE LAW OF THE UNITED STATES, 24–42.

[10] Stone *v.* Elkins, 24 Cal. 125 (election contest). See State *ex rel.* Arpen *v.* Brown, 19 Fla. 563 (revoking license for cause).

[11] See Andrews *v.* Judge of Probate, 74 Mich. 278 (election contest); Hartford Fire Insurance Co. *v.* Raymond, 70 Mich. 485 (revoking license for cause).